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HOUSE BILL NO. 1998

Offered January 19, 1999

A BILL to amend and reenact § 64.1-57.1 of the Code of Virginia, relating to the grant of powers to a personal representative or trustee by a circuit court.

Patrons—Howell, Clement, McClure and Murphy

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 64.1-57.1 of the Code of Virginia is amended and reenacted as follows:

§ 64.1-57.1. Grant of such powers to personal representative or trustee by circuit court.

Upon motion of a personal representative or trustee ~~to the circuit court in which he is qualified~~, such a circuit court may grant to the sole personal representative or trustee, if there is only one, or to all the personal representatives or trustees, if there is more than one, all or a part of such powers as may be incorporated by reference pursuant to § 64.1-57. As used in this section, the terms "personal representative" or "trustee" shall include the plural of such terms unless the context requires otherwise and the former term shall encompass within its meaning the administrator of an intestate decedent's estate. If there is more than one personal representative or trustee, the court may specify as to whether the consent of all personal representatives or trustees or a majority thereof shall be required, and in absence of such specification, the consent of all such personal representatives or trustees to such act shall be required.

Such motion shall be filed in the circuit court in which the personal representative or trustee qualified, or if there was no qualification, the circuit court for the jurisdiction in which the grantor resides or resided at the time of his death, a trustee resides or a corporate trustee has its registered office. Such motion may be ex parte; however, the court, in its discretion, may require such notice to and the convening of interested parties as it may deem proper in each case. Notwithstanding the granting of or the failure to grant such powers, the court shall have continuing jurisdiction to confer powers in addition to those previously granted or to revoke any or all such powers previously granted by the court. Such additional grant or revocation may also be ex parte.

The court may, in granting or withholding such powers, take into consideration whether the personal representative or trustee was nominated by the decedent, *the grantor* or ~~by~~ the beneficiaries; the number and capacity of the beneficiaries and their ability or inability to consent to the acts of the personal representative or trustee which are otherwise within the scope of § 64.1-57; the relationship of the personal representative or trustee to the beneficiaries; the character of the estate to be administered, including any real estate which would be within the scope of the powers granted by the provisions of § 64.1-57; and the capacity of the personal representative or trustee to perform under the powers conferred and to answer for any acts for which he might be held accountable under his bond.

The court, in its discretion, may attach further conditions to such grant of power in any manner which it shall deem necessary and proper.

In no case shall any power or powers be granted hereunder by any court, if the grant of such power or powers would be contrary to the intention of the testator *or grantor* as implied from or as expressed in the will or would otherwise be inconsistent with the disposition therein made.

As used in this section, the word "trustee" shall refer to a trustee under a probated will or an inter vivos trust *instrument*.

INTRODUCED

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